

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANNETTE P. TISSUE, a single woman,

Plaintiff,

V.

CITIFINANCIAL, INC., a Texas Corporation doing business in Spokane, Washington, and their AGENTS, QUICKEN LOANS, INC., a Michigan Corporation doing business in Spokane, Washington, and their AGENTS, and COUNTRYWIDE HOME LOANS, INC., a Texas Corporation doing business in Spokane, Washington and their AGENTS.

Defendants.

NO. CV-09-53-RHW

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION

Before the Court is Plaintiff's Motion for Preliminary Injunction (Ct. Rec. 48, 95). A telephonic hearing was held on the motion on September 24, 2009. Plaintiff was represented by Rule 9 Intern Ross Britton and attorney Alan McNeil. Defendant Countrywide was represented by Andrew Sachs. Scott Anders also participated.

On September 2 and 3, 2009, the Court held hearings on Plaintiff's motion. At the end of the hearing, the Court invited supplemental briefing. The Court directed counsel for Defendant Countrywide to provide documentation regarding the ownership of the note in question. The Court directed counsel for Plaintiff to provide additional briefing on the merits of the motion, and particularly to provide

1 authority for the Court to enjoin Defendant Countrywide. Both parties submitted
 2 additional briefing.

3 **BACKGROUND FACTS**

4 Plaintiff is a seventy-eight-year-old widow, who is facing foreclosure on a
 5 house that she has lived in for over sixty years. Through a series of home-equity
 6 loans, Plaintiff went from owning her home outright to owing more than \$120,000.
 7 A significant portion of the money obtained from the loans went to pay for the fees
 8 and charges associated with the seven loans that were issued between June 13,
 9 2007.

10 Plaintiff filed this lawsuit on February 20, 2009, in an attempt to stop the
 11 foreclosure, rescind the loans, and obtain damages. On February 25, the Court
 12 denied Plaintiff's Motion for Temporary Restraining Order, because Plaintiff
 13 indicated that Defendant Countrywide notified her that they agreed to suspend
 14 foreclosure activity at that time. (Ct. Rec. 6). On July 10, 2009, Plaintiff filed a
 15 Motion for Preliminary Injunction. In her motion, Plaintiff seeks to enjoin
 16 Defendant Countrywide from foreclosure action against her.

17 **ANALYSIS**

18 **A. Standard of Review**

19 Federal Rule of Civil Procedure 65 authorizes a court to enter a preliminary
 20 injunction or temporary restraining order. *See Fed. R. Civ. P. 65.*

21 Recently, the Supreme Court and the Ninth Circuit set forth the proper
 22 standard for granting or denying a preliminary injunction. In *Winter v. Natural*
 23 *Res. Def. Council, Inc.*, 129 S.Ct. 365 (2008), the Supreme Court stated:

24 A plaintiff seeking a preliminary injunction must establish that
 25 he is likely to succeed on the merits, that he is likely to suffer
 26 irreparable harm in the absence of preliminary relief, that the balance
 27 of equities tips in his favor, and that an injunction is in the public
 28 interest.

Id at 374; *see also American Trucking Assoc'n, Inc. v City of Los Angeles*, 559

1 F.3d 1046, 1052 (9th Cir. 2009).¹

2 “A preliminary injunction is an extraordinary remedy never awarded as of
 3 right.” *Winter*, 129 S.Ct. at 376. The sole purpose of a preliminary injunction is
 4 the “preserve the status quo ante litem pending a determination of the actions on
 5 the merits.” *Sierra Forest Legacy v. Rey*, – F.3d –, 2009 WL 2462216 (9th Cir.
 6 2009). Injunctive relief must be tailored to remedy the specific harm alleged.

7 **B. Plaintiff’s Arguments**

8 The underlying theme in Plaintiff’s briefing is that this Court should
 9 preserve the status quo pending a determination of the actions on the merits. While
 10 that is the purpose of a preliminary injunction, it cannot serve as the basis. Rather,
 11 Plaintiff must meet the requirements of a preliminary injunction as set forth in
 12 *Winter*. In order to succeed on her motion for preliminary injunction, Plaintiff
 13 must establish that she is likely to succeed on the merits, that she is likely to suffer
 14 irreparable harm in the absence of preliminary relief, that the balance of equities
 15 tips in her favor, and that an injunction is in the public interest. Plaintiff has failed
 16 to meet her burden.

17 In her briefing, Plaintiff argues that the Court should enjoin the foreclosure
 18 because it is not clear exactly who is the holder of the note. Plaintiff argues that
 19 Defendant CitiFinancial, Inc. and Quicken Loans, Inc. committed fraud, in part by
 20 inflating her income. Plaintiff argues that Defendant Countrywide should not be
 21 permitted to proceed in any action against Plaintiff because of the fraudulent nature
 22 of the mortgage dealings and the acquisition of the mortgage. Plaintiff alleges that
 23 the loan is facially unconscionable and clearly doomed for default. However,
 24 Plaintiff failed to establish any wrong-doing on the part of Defendant Countrywide
 25 nor did she provide any legal authority that would permit this Court to enjoin
 26 Defendant Countrywide.

27
 28 ¹This new standard replaces the Ninth Circuit’s “possibility of irreparable
 harm” test.

1 In her supplemental briefing, Plaintiff again fails to explain how or why this
 2 Court would have authority to enjoin Countrywide. Rather, Plaintiff focuses on
 3 the deficiencies with regard to the wording and placement of the notices. Notably,
 4 Plaintiff does not provide the Court with evidence that the notices were deficient.
 5 Instead, she states that because Defendant has not shown that the notices confirmed
 6 to state law, the Court must enjoin the foreclosure. This argument misses the
 7 point. It is Plaintiff's burden to establish that injunctive relief is appropriate.

8 The problem with Plaintiff's position is two-fold. First, Plaintiff focuses on
 9 the conduct of the loan originator, but has failed to provide the Court with any
 10 authority that would permit it to enjoin Countrywide for the loan originator's
 11 conduct. Second, Plaintiff has not established that Countrywide has done anything
 12 wrong. Plaintiff argues that Countrywide should have known from the face of the
 13 loan that it was a predatory loan, and should have never purchased the loan from
 14 Quicken. However, as Defendant points out, there is nothing on the face of the
 15 loan to indicate that the loan was predatory. Moreover, in her amended complaint,
 16 the only claims being asserted against Countrywide are violations of the Real Estate
 17 Settlement Procedures Act and the Fair Debt Collection Practices Act. Plaintiff has
 18 not argued that violations of these statutes would support the issuance of a
 19 preliminary injunction.

20 On September 22, 2009, Plaintiff filed a Declaration by Thomas Tarter.²
 21 Plaintiff indicates that Mr. Tarter has been retained as an expert witness. It is Mr.
 22 Tarter's opinion that Defendant Countrywide has not provided adequate documents
 23 to support that it has authority to foreclose on Plaintiff's loan. Mr. Tarter's
 24 opinion, however, fails to show that Defendant Countrywide engaged in any
 25 wrongful conduct.

26 It is a tragedy that Plaintiff is facing foreclosure of her home. However, in

27 ²The Court Order directed Plaintiff to file her supplemental briefing by
 28 September 14, 2009.

1 this case, the law and evidence as presented to the Court does not support the
2 granting of the extraordinary remedy of enjoining Defendant Countrywide from
3 enjoining the pending foreclosure.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. Plaintiff's Motion for Preliminary Injunction (Ct. Rec. 48, 95) is

6 **DENIED.**

7 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
8 Order and forward copies to counsel.

9 **DATED** this 29th day of September, 2009.

10
11 s/Robert H. Whaley

12 ROBERT H. WHALEY
13 United States District Judge

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